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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/557,459	04/24/2000	Mark Vincent Shoen	57111-5072	7663

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JEFFER, MANGELS, BUTLER & MARMARO, LLP  
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LOS ANGELES, CA 90067

EXAMINER

YEAGLEY, DANIEL S

ART UNIT	PAPER NUMBER
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3611

DATE MAILED: 02/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/557,459

Applicant(s)

SHOEN, MARK VINCENT

Examiner

Daniel Yeagley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 9-13, 15-17, 19, 20 and 23-39 is/are pending in the application.
- 4a) Of the above claim(s) 25 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 9-13, 15-17, 19, 20, 23, 24 and 27-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other:

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's affirmation of the election of group I, claims 1 - 24 in Paper No. 4 was acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election was treated as an election without traverse (MPEP § 818.03(a)). Claims 25 and 26 were withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 34 - 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Whitton '516.

Whitton show a fender<sup>§ 1, 4</sup> (3 and 6) comprising a uniformed cross-section which is curved radially downward in a longitudinal direction as seen in figure 3, that includes a curved surface as shown in figure 4 in a lateral direction of the fender to an outer edge with an outer wall extending downward from the outer edge of the top portion, and a clearance increasing portion depending downward from an inner edge of the top portion at a non-zero acute angle in a plane with an inner wall (lower portion of numeral 6) depending downward from the increasing portion

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at a second non-zero acute angle in a second plane such that the top portion and the inner wall are oriented substantially perpendicular and the planes are non-coplanar and the angles are each between *about* 1 and 89 degrees, and wherein the clearance increasing portion is concaved as viewed from the interior surface of the increasing portion in a longitudinal direction of the fender as clearly shown in figure 1 and 3. Whitton further shows a light housing (element 10 and 5) which are connected (mounted) to the fenders and is clearly shown in figure 4 and are offset from a longitudinal midline of the fender as broadly claimed.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1– 3, 6, 7, 9, 17, 29 - 31 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitton '516 in view of Caponi '705.

Whitton as restated above clearly shows a curved fender (figure 3) in conjunction with a wheel, wherein an outer wall depends downward from the outer edge of the top portion of the fender (figure 4) to cover at least part of the wheel (figure 2 and 3) with an increasing portion depending downward from the inner edge of the top portion of the fender (figure 4) with an inner wall (lower portion of numeral 6) extending downward from the increasing portion (left side of fender shown in figure 4) wherein, the angles of the fender are between 1 – 89 degrees at *about* 40 – 50 degrees that add up to *about* 90 degrees between the upper portion and the inner wall,

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and includes a light housing (5 and 10) which is mounted to the fender and offset from a longitudinal midline of the fender as broadly claimed but failed to show the light housing attached to the curved surface of the top portion.

Caponi clearly shows the art of applying a light housing to a top curved portion of a fender as claimed such that the light is attached to a top portion of the fender utilizing a light housing with a raised portion 14 adapted to receive a light fixture 34 that conforms to at least a portion of the curved surface which clearly teaches the prior art of attaching a light fixture to a curved portion of a fender in an offset position from a midline of the fender as clearly shown in figure 1 of Caponi.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the fender of Whitton and attached a light housing to the curved portion of the fender utilizing a light housing such as shown by Caponi that conforms to at least a portion of the curved surface as taught by the fender light apparatus of Caponi simply as an alternate mounting location for a head lamp or as an additional turn signal light apparatus for added safety to enhance the use of the vehicle which are well known in the vehicle art and obvious additions to one skilled in the art.

6. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Whitton '516 as modified by Caponi '705 in further view of Hardwick '808.

Whitton '516 as modified by Caponi '705 failed to show a fender wherein the top portion comprises a plurality of planer sections with a substantially flat middle section and two curved end sections. Hardwick shows a fender having a clearance increasing portion and inner and

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outer wall depending from the top portion of the fender which shows the prior art of constructing a fender such that the top portion comprises a substantially flat middle section and is curved downward at the end sections having a plurality of planer sections as shown in figure 1 of Hardwick.

It would have been obvious to one of ordinary skill in the art to have further modified the fender of Whitton as modified by Caponi with a fender such as shown by Hardwick having the top portion of the fender comprising a substantially flat middle section and curved downward at the end sections having a plurality of planer sections as clearly shown in figure 1 of Hardwick as a matter of design choice to cover the wheel or alternatively to cover an additional wheel of a vehicle, such as in the case of the fender as shown in the dual wheeled vehicle of Hardwick.

7. Claims <sup>(28) (24-29)</sup> 1) - 3, 6, 9 - 13, 15 - (17), 19, 20, 23, 24 and 27 - 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poveromo '664 in view of Poveromo '749.

Poveromo '664 shows in figure 1 a plurality of fenders 20,22 on a trailer or tow dolly, with a light housing 50 attached to a top of the fender in an offset manner from a midline of the fender as broadly claimed, the fender as shown in figure 3, and figure 7 show the top portion with a flat middle section and curved end sections at opposed inner and outer edges of the top portion with an outer wall extending downward from the outer edge of the top portion and a clearance increasing portion (angled portion) depending downward at a non-zero acute angle of about 1 - 89 degrees from the inner edge of the top portion to an inner wall that depends downward at a non-zero acute angle which is perpendicular to the top portion at approximately 90 degrees, figure 5 shows an alternate embodiment of a fender with a plurality of planer

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sections which is curved in the longitudinal direction and figure 8 appears to show all the bottom edges of the curved fender at their longitudinal ends of the top portion, inner and outer walls and clearance increasing portion all lying in a common plane as claimed wherein the light housing is attached to the curved portion of the fender by an integral base.

Poveromo '749 shows in figure 1 a plurality of fenders on a trailer or tow dolly with a light housing attached to a top portion of the fender, <sup>fig 4</sup> figure 7 shows the top portion with a flat middle section and curved end sections which is curved in the longitudinal direction, wherein figure 4 more clearly shows the light housing (figure 5) with a base portion 86 that conforms to at least a portion of the curved surface of the fender (figure 4) for attaching the light housing to the curved surface of a top portion of the fender as broadly claimed by applicant and wherein the raised portion 62 of Poveromo '664 are clearly capable of being attached to the base portion 86 of Poveromo '749 as modified.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have combined the teachings of the Poveromo' fender mounted light housing arrangements and mounted the light housing in an offset manner such as shown by Poveromo '664 utilizing a more simpler base portion such as shown by Poveromo '749 which conforms to the curved portion of the fender as disclosed by the Poveromo references for mounting a light housing to the fender of a trailer to reduce manufacturing cost and add more clearance between the light housing in reference to the trailer bed as clearly depicted in figure 1 of Poveromo '664 as a matter of design choice dependent only upon users preference and the vehicles intended use.

*Response to Arguments*

8. Applicant's arguments filed 12/18/02 have been fully considered but they are not persuasive. The additional claim limitation of the light housing being offset from a midline of a fender in a direction away from the clearance increasing portion is not considered novel as this feature is shown by various references cited and as stated above in reference used to reject the broad claims. Whitton as restated above clearly shows a curved fender with an increasing portion incorporated into the fender which depends downward from an inner edge of the top portion of the curved fender (figure 4) and as modified by Caponi who teaches the art of applying a light housing to the outer side of the top portion of the curved fender of a vehicle as clearly shown being in an offset position toward the outside edge of the curved top portion which would be away from the increasing portion of Whitton's curved fender as modified. Wherein as broadly read; Whitton increasing portion is concaved as seen from an inner surface side the fender in a longitudinal direction (figure 3). Poveromo '664 also shows the art of a curved fender (figure 4) for a trailer which clearly shows the fender being curved in both a radially downward direction in the longitudinal direction of the fender and also curved in the lateral direction as seen on the inner side of the top portion at the bottom edge in figure 4, with a portion of the light housing integrally mounted to the curved surface of the top portion; such as disclosed by applicant on page 6, line 26-27 of the specification being integral and the clearance increasing portion (left angled side portion of the fender shown in figure 3) clearly extends downward from the top surface at an acute angle wherein as modified by Poveromo '749 shows the prior art of the light housing base conforming to a curved surface of the top portion of the fender as broadly claimed rather than integral with the fender such that the raised portion 62 of Poveromo '664



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light arrangement is capable of attaching to the curved fitted light housing of Poveromo '749 light housing as modified and the art of making of parts integral or not is not deemed a novel concept and would have been obvious to one skilled in the art.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

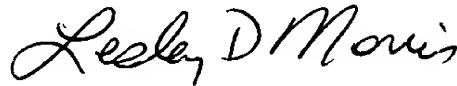
10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel Yeagley whose telephone number is 703-305-0838. The examiner can normally be reached on Mon. - Fri; first Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lesley D Morris can be reached on 703-308-0629. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

D.Y.  
January 29, 2003



Lesley D. Morris

~~Primary Examiner~~

SPE A43611